

The sole reason for the Petition, according to paragraph 4 is that the minor child has resided with the Petitioner/father for five (5) years and the Name Change Petition, if granted will “allow the minor child to further bond with Father and to carry on Father’s family line.” *Id.*

Petitioner certified that there are no creditors or other persons who would be defrauded or adversely affected and the Petition had been published in the New Castle Weekly for three (3) consecutive weeks without objection, except for Respondent's Formal Opposition to the Petition.

Petitioner also certified he had no pending criminal charges and was not subject to supervision by the Department of Correction and was not required to register with the Delaware State Police or any other law enforcement authority in any jurisdiction.

## **II. The Facts**

Earl A. Holt, Jr. ("Petitioner") was sworn and testified. Petitioner's minor child was born May 31, 2000 and resides with him. The sole reason for the Petition was that the child is the only sibling to carry on the "Holt" name and because the minor child, Patrick Ryan Gant resides with him he can further the bond with his father and carry on the "Holt" family name. The child has resided with him, according to Petitioner, for six (6) years pursuant to a Family Court Custody Order.

According to Petitioner, the child sees his mother every other weekend. The mother allegedly, according to petitioner, is \$8,000.00 in arrears for child support. Petitioner claims the mother has no contact with the child, except the two week visitation and the child's mother does not contact the minor child at all. According to Petitioner, his son, Patrick Ryan Gant wants his Name Change Petition granted to reflect his father's name. According to the Petitioner, when he participates in basketball or baseball games his finds it difficult to have a different last name. According to Petitioner, his son Patrick desires the change and for instance, when he receives a trophy he would like to have his father's surname on the baseball trophy, and bear the same name as his father at sports events.

Petitioner believes he pays all the expenses for the child and finds it embarrassing when people ask his son why he doesn't have his father's last name. Petitioner believes that not only does his son prefer the name "Holt" but it would be a bonding agent for him if the Name Change Petition was granted.

Patricia K. Gant ("Respondent") took the stand and testified. Respondent testified that she calls the child "all the time", but that his father won't let him pick up the phone. Respondent claims she is only in arrears a certain amount, maybe \$4,000.00 - \$6,000.00, because she was unemployed at the time of the child support order. Respondent testified she had spoken with the child and he does not prefer his father's name. For the past four or five years she has made numerous attempts to call her son Patrick all the time. She claims the Petitioner denied his son's paternity for several years and only when she obtained a court ordered blood test and proved he was the father did Petitioner assume responsibility. She agrees that full custody was granted to Petitioner but only when she was unemployed did she fail to pay child support and became in arrears. Respondent claims Patrick only resided with his father for five (5) years. Finally, Respondent claims the Petitioner threatened her if she came and testified in opposition to the name change petition.

The Petitioner was recalled to testify. According to Petitioner he was only declared to be the father when Patrick was five (5) years old. He testified contrary to Respondent and claims he has never threatened the child's mother as she has had no contact with him. The Petitioner claims he has little contact with the child's mother because it usually turns into a bitter dispute when they communicate personally as it did in Court during the hearing.

### **III. The Law**

#### **Sec. 5901. Petition for change of name.**

(a) Any person who desires to change his or her name, shall present a petition, duly verified, to the Court of Common Pleas sitting in the county in which the person resides. The petition shall set forth such person's name and the name he or she desires to assume.

#### **Sec. 5902. Requirements for minor's petitions.**

If the name sought to be changed under this chapter is that of a minor, the petition shall be signed by at least one of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of 14, the petition shall also be signed by the minor.

#### **Sec. 5903. Publication of petition prior to filing.**

No petition for change of name under this chapter shall be granted unless it affirmatively appears that the petition has been published in a newspaper published in the county in which the proceedings is had, at least once a week for 3 weeks before the petition is filed.

#### **Sec. 5904. Determination by Court.**

Upon presentation of a petition for change of name under this chapter, and it appearing that the requirements of this chapter have been fully complied with, and there appearing no reason for not granting the petition, the prayer of the petition may be granted.

#### **Sec. 5905. Costs.**

The costs of any proceeding under this chapter shall be paid by the petitioner.

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#### **Rule 81. Petitions for change of name.**

(b) A petition which seeks a change of name for a minor shall be signed by at least one of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of fourteen, the petition shall also be signed by the minor.

\*3 (c) ...

(d) If the petition is signed by only one parent, it shall be served, before presentation, upon the parent who did not join in the petition. If personal service cannot be made, substituted service shall be made as the Court directs.

As set forth in Degerberg v. McCormick, et al., Del. Ch. 187 A .2d 436 (1963), the following law applies:

The right of one parent, against the objection of the other, to change the surname of a child has been the subject of frequent judicial consideration. The great majority of cases presenting the problem have arisen under change of name statutes, or as incidental to divorce proceedings. In a few cases the natural respondent has sought relief where the divorced mother has registered children in school under the surname of a step respondent. The decisions are annotated in 53 A.L.R.2d 914. As the annotator there observes, the courts have generally considered the welfare of the child as the controlling consideration regardless of the manner in which the problem may arise. So, in the present case, the question to be considered is the best of the child.

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In determining whether or not it is in the child's best interest to permit a change in his surname certain factors have been regarded by the courts as of prime importance. *First of all, recognition is accorded to the usual custom of succession to the paternal surname, and, it is said, this succession is a matter in which the respondent, as well as the child, has an interest which is entitled to protection. Re Epstein*, 121 Misc. 151, 200 N.Y.S. 897; *Re Larson*, 81 Cal.App.2d 258, 183 P.2d 688; *Kay v. Kay*, Ohio Com. Pl., 51 Ohio Op. 434, 112 N.E.2d 562. Secondly, the interest manifested by the respondent in the welfare of the child as evidenced by support, visitation and promptness of complaint as to the attempted change of name. *Kay v. Kay, supra*. Thirdly, the effect of a change of surname on the relationship between the respondent and his child. *Mark v. Kahn*, 333 Mass. 517, 131 N.E.2d 758, 53 A.L.R.2d 908; *Rounick's Petition*, 47 Pa. Dist. & Co. 71; *Kay v. Kay, supra*.

\* \* \*

Authority, both judicial and psychiatric, recognizes that a change of surname of a child of divorced parents may contribute to

estrangement of the child from his respondent. So, in *Mark v. Kahn, supra*, the court said: "The bond between a respondent and his children in circumstances like the present is tenuous at best and if their name is changed that bond may be weakened if not destroyed." And, in *Re Epstein, supra*, it is said that the court should not "foster any unnatural barrier between the respondent and son." To the same effect, see *Application of Wittlin, City Ct., 61 N.Y.S.2d 726; Rounick's Petition, supra; Kay v. Kay, supra*. The views expressed in these cases find support in the testimony of psychiatrists adduced in this case.

In a recent decision by this Court, the following factors were considered relevant as to a determination of whether the best interests of a petitioner was served by the granting of the proposed name change. See, *IN RE: Change of Name of Evans to Brown*, Del. CCP, C.A. No.1998-10-147, Welch, J. (March 11, 1999). The factors the Court considered in determining as to whether "the best interests of the child" would be served by granting the proposed name change were as follows:

1. A parent's failure to financially support the child;
2. A parent's failure to maintain contact with the child;
3. The length of time that a surname has been used for or by the child;
4. Misconduct by one of the child's parents;
5. Whether the surname is different from the surname of the child's custodial parent;
6. The child's reasonable preference for a surname;
7. The effect of the change of the child's surname on the preservation and development of the child's relationship with each parent;
8. The degree of community respect associated with the child's present surname and proposed surname;
9. The difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed name;

10. The identification of the child as a part of the family unit.

The law as it applies in the instant case is set forth in Chapter 59, Title 10 of the Delaware Code as well as CCP Civ. R. 81. The legal standard is the "best interest of the child" standard in contested change of name petitions involving minors.<sup>1</sup> See, *In re Change of Name of Walter to Coffin*, Del. CCP C.A. No.1998-06-222, Fraczkowski, J. (September 30, 1998), *In re Change of Name of Evans to Brown*, Del. CCP C.A. No.1998-10-147, Welch, J. (March 11, 1999). Clearly what constitutes the "best interests of the child" involves a factual analysis involving the relationship and family structure of a minor. See, *In re Change of Name of James Roy Runyon, Jr., to James Roy McGarrity*, Del. CCP C.A. No.1999-06-185, Smalls, C.J. (August 13, 1999).<sup>2</sup>

#### **IV. Discussion**

In the instant case the Court has a fairly complete trial record with regards to the Name Change Petition held in this matter for Patrick Ryan Gant, which has been filed by his father. Looking at the above factors, which the Court considers in whether it is the best interest to grant the Name Change Petition, it is clear that considering the record as a whole the Petitioner's mother sees the child only every other weekend. While there is a dispute about other child contact, it is clear that the Petitioner's father, Earl A. Holt, Jr., has full custody and tends to the child's normal affairs, such as taking him to school, baseball games, and is financially supporting him even when the Respondent, mother of the child, does not pay child support. It does not appear to the Court that there has been any misconduct by either the child's parents.

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<sup>1</sup> Even when petitions were or are heard in the Family Court, as set forth in *In the interest of Michael Cardinal and Catherine Cardinal v. Tanya E. Perch*, Family Court, 611 A.2d 515 (1991) "the great weight of judicial authority today supports the proposition that a child's last name should be determined on "best interest" standard.

It is also clear that the surname currently used is different from the surname of the child's custodial parent, Earl A. Holt, Jr., and according to at least the Petitioner, the child has a reasonable preference for his father's name to avoid embarrassment and/or difficulties at school and/or sporting events. The Court believes there is evidence in the record that the effect of having the father's name would have a preservation and development of the child relationship at least with the father because he has full custody and takes care of the child. According to the Petitioner, there are also difficulties by the child having been present and in full custody of the father and bearing a different surname than his proposed surname. According to Petitioner there are also some difficulties in school, with peers and/or sporting events having Patrick have a different last name than his custodial parent.

The Court also finds that having the father's name would be a positive development in the identification of the child as part of a family unit as the father of the Petitioner has custody.

The Court does recognize the Respondent/mother offered testimony that she tries on many occasion to contact the child. However, it is clear that the father has custody and is raising the child as a full custodial parent.

The Court finds equally balanced the charge that Respondent/mother claims Petitioner harassed or threatened her if she opposed the Name Change Petition. Little weight is given by the Court to this factor.

The Court also notes that while the father has custody, the Respondent/mother is in child support arrears according to her own admission, and has failed to pay current the Child Support Order and be current.

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<sup>2</sup> Other jurisdictions have addressed the factual analysis applied involving relationship of the minor in determining what is the best interests of the child. In *Schiffman v. Schiffman*, Cal.Sup., 620 P.2d 579 (1989), the Court outlined a similar analysis to that used by this Court in determining what is in the best interest of the child.



### **V. Conclusions of Law**

It would be in the best interest of the minor child Patrick Ryan Gant to have his name changed to reflect the name of the custodial parent Patrick Ryan Holt.

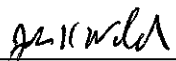
### **VI. Opinion and Order**

The Court finds based upon the testimony at trial, analysis of the factors considered in a Name Change Petition in the instant matter that it would be in the child's best interest, Patrick Ryan to have the last surname "Holt".

The Court finds this conclusion is based upon a preponderance of evidence and therefore **GRANTS** the Name Change Petition.

Each party will bear costs equally. A Form of Order is attached hereto to reflect the Court's decision

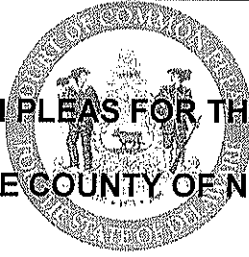
**IT IS SO ORDERED** this 16<sup>th</sup> day of June, 2011.

  
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**John K. Welch, Judge**

/jb  
Enclosure

cc: Mr. Jose Beltran  
CCP, Civil Case Manager

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR THE COUNTY OF NEW CASTLE



IN THE MATTER OF  
PATRICK RYAN GANT,  
PETITIONER

TO

PATRICK RYAN HOLT

C.A. NO: CPU4-11-003262

Petitioner's Date of Birth:  
03/31/2000

CHANGE OF NAME

ORDER

This 6th day of June, 2011, the Verified Petition in this Matter having  
been heard and considered;

IT IS SO ORDERED that the Petitioner from this day forward and for all  
purposes shall bear the name of **PATRICK RYAN HOLT**.

  
JUDGE/COMMISSIONER

